

## REMARKS

Before entry of this Amendment, claims 1-27 were pending in the application. After entry of this Amendment claims 1-27 remain pending under examination. Claims 28-30 have been previously withdrawn. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicants have carefully considered the Examiner's Action of November 1, 2006, and the references cited therein. The following is a brief summary of the Action. Claims 11 and 12 were objected to because of informalities, which have been corrected in this Amendment. Claims 1-5 and 7-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al (U.S. Patent 6,106,959) in view of Haffner et al (U.S. Patent 6,045,900). Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al (U.S. Patent 6,258,308).

The provisional rejections of claims 1-27 over claims 22-30 of co-pending Application No. 10/703,761 and claims 30-33 and 37-43 of co-pending Application No. 10/918,553 for obviousness-type double patenting are noted and will be addressed at such time as either of the noted applications becomes a patent with claims that would support such rejections.

Applicants have amended claim 1 to correct a typographical error.

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-5 and 7-27 under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al.

Claim 1 calls for a breathable laminate formed from a nonwoven support layer bonded to an oriented film. The oriented film of each of claims 1-27 requires “a letdown resin phase” and a “carrier resin phase.” Each of claims 1-27 requires the “letdown resin phase” to comprise “a first ethylene copolymer having a density between 0.900 and 0.915 g/cc and a melt index of no greater than 6 g/ 10 minutes.” Each of claims 1-27 requires the “carrier resin phase” to comprise “a filler and a different ethylene polymer or copolymer having a density at least about 0.003 g/cc greater than the density of said letdown resin.” Substantially all of the filler particles in the oriented film are contained within discrete regions of the carrier resin phase, as depicted for example in the cross-sectional illustration of FIG. 1.

Lines 18-21 on page 3 of the Office Action contend that (emphasis added):

Instant claim 1 requires different ethylene copolymers with a **density difference** of at least 0.003 g/cc between the carrier and letdown resins. This is provided for by Heyn et al. in that densities of the ethylene copolymers may vary from 0.900 to about 0.935 g/cm<sup>3</sup> and that the same or different copolymers may be used in the separate phases.

The Examiner has pointed out that the different extruded portions of the film disclosed in Heyn et al may have densities which vary as much as 0.035 g/cm<sup>3</sup>. While the disclosure in Heyn et al permits the densities to vary, Heyn et al fails to suggest or disclose which of the two phases, carrier resin and the letdown resin, must have the greater density. Heyn et al also fails to suggest or disclose how much greater the density of the one phase must be relative to the other. Applicants' claims require that the densities of the carrier resin and the letdown resin differ by at least about 0.003 g/cc, and that it is the density of the ethylene polymer or copolymer used in the carrier

resin that must be greater than the density of the ethylene polymer or copolymer used in the letdown resin. These elements of claim 1 are not disclosed in Heyn et al.

Moreover, if Heyn et al appreciated that the different ethylene polymer or copolymer of the carrier phase should have a density at least about 0.003 g/cc greater than the density of the letdown resin, Heyn et al would not have suggested that the same ethylene polymer or copolymer can be used for both the carrier phase and the letdown resin.

As explained throughout Applicants' specification, the film formulations for the letdown and carrier resins result in better film properties, particularly when used as breathable films in absorbent article constructions. The improved film formulation results in a film/nonwoven laminate with increased cross machine direction (CD) extensibility and integrity. As explained at page 7 of the specification, important to the design of the film/nonwoven laminate is the selection of a letdown resin having the density and melt index parameters as set forth in claim 1. Because Applicants have demonstrated advantages from the particular formulations being claimed, the burden shifts to the Office to demonstrate that the prior art recognized that these advantages could be obtained from these particular formulations.

Applicants respectfully submit that the Haffner et al publication does not overcome Heyn et al's deficiencies and their combination does not render claim 1. Recall that paragraph 1 on page 2 of the Final Office Action said that Haffner et al:

fails to teach an ethylene copolymer having a density between 0.900 and 0.915 and a melt index of 6 and a different ethylene polymer or copolymer having a density of at least 0.003 g/cm<sup>3</sup> greater than that of the letdown resin.

Recall also that subparagraph “a” of paragraph 1 on page 3 of the Final Office Action took the following position about Haffner et al’s disclosure:

Example 1 teaches the use of calcium carbonate (filler), LLDPE [carrier resin] (density of  $0.918 \text{ g/cm}^3$  and a melt index of 3.5 g/ 10 min) and LDPE [letdown resin] (density of  $0.916 \text{ g/cm}^3$  and a melt index of 12 g/ 10 min). \* \* \* The applied reference is silent as to the use of an ethylene polymer or copolymer having a density of at least  $0.003 \text{ g/cm}^3$  greater than that of the letdown resin.

Hence, neither Haffner et al nor Heyn et al discloses that the different ethylene polymer or copolymer that constitutes the carrier phase (containing the filler such as calcium carbonate) has a density at least about  $0.003 \text{ g/cc}$  greater than the density of the ethylene copolymer that constitutes the letdown resin. In fact, if the present Office Action insists that the person of ordinary skill has something to learn from Haffner et al about how to modify the Heyn et al film, then it is more plausible than not that the person of ordinary skill would assume that the amount by which the density of the carrier resin exceeded the density of the letdown resin should be no more than what is disclosed in Haffner et al, namely  $0.002 \text{ g/cc}$ . Moreover, the present Office Action apparently agrees that the density variation should be  $0.002 \text{ g/cc}$  because the present Office Action states at lines 11 – 13 on page 5 that (emphasis added):

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have bonded the film of Heyn et al. to the support layer of Haffner et al. **as well as make the article to the basis weights of Haffner et al.**

Since the basis weights of Haffner et al yield a density difference of only  $0.002 \text{ g/cc}$ , making the article to the basis weights of Haffner et al results in a density difference of  $0.002 \text{ g/cc}$ , which is not greater than  $0.003 \text{ g/cc}$ .

Applicants therefore respectfully assert that the combination of Heyn et al and Haffner et al does not disclose Applicants' invention.

Accordingly, it is respectfully submitted that claim 1 is allowable over the art of record. Claims 2-27 only further patentably define the invention of claim 1 and are thus allowable for at least the reasons claim 1 is allowable. Applicants therefore respectfully submit that claims 1-5 and 7-27 are patentable under 35 U.S.C. § 103(a) over Heyn et al in view of Haffner et al.

For the reasons explained below, applicants respectfully traverse the rejection of claim 6 under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al. Brady et al fails to correct the deficiencies noted above in Heyn et al in view of Haffner et al as applied to claim 1, and thus claim 6 is patentable under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al.

Claim 6 requires the carrier resin ethylene polymer or copolymer to have a melt index of at least about 20 grams per 10 minutes. Brady et al is cited for its disclosure of a film with a melt index of 25 grams per 10 minutes. However, Brady et al is not constructed in the same manner as the oriented film of claim 6 with substantially all of the filler contained only within discrete regions of the carrier resin phase and thereby separated from contact with the letdown phase. Brady et al column 11, lines 30 – 36, calls for obtaining “a uniform dispersion of the filler in the polymer.” The Heyn et al film, which is closer to that of the claim in this regard, calls for a much different level of melt index. Per Heyn et al, column 3, lines 12 – 14, the ethylene copolymer (LLDPE) of this carrier resin phase has “a melt index (MI) of about 0.1 to about 5.0 grams per 10

minutes." The conclusion of obviousness is therefore reached only by selecting a single feature out of a dissimilar film disclosed in Brady et al. The particular selection of that feature is guided solely by applicants' specification.

Applicants therefore respectfully submit that claim 6 is patentable under 35 U.S.C. 103(a) over Heyn et al in view of Haffner et al as applied to claim 1, and further in view of Brady et al.

Applicants respectfully request reconsideration and reexamination of claims 1-27, as presented herein, and submit that these claims are in condition for allowance and should be passed to issue.

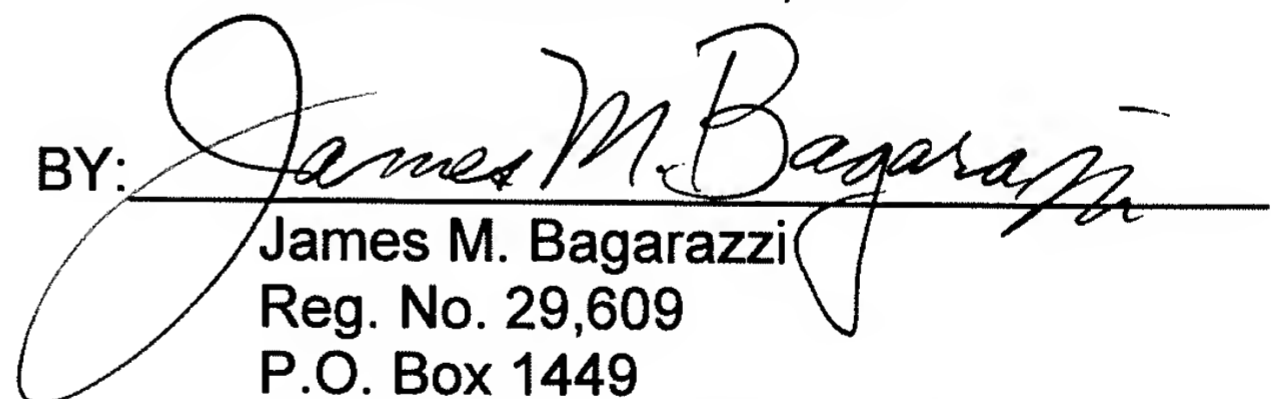
If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith. The Examiner is encouraged to contact the undersigned at his convenience should he have any questions regarding this matter or require any additional information.

Respectfully submitted,

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